IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.2258 OF 1997

Bombay Telephone Canteen Employees)
Association, a Trade Union through its)
General Secretary Shri Sudhakar)
Jayarappa Shetty, residing at Sudam Wadi)
Laxman Kenny Building, 3rd Floor)
D.N.C.Road, Dombivili (East) 421 201)
Dist. Thane.)..PETITIONER

VERSUS

1) Union of India through the)
Department of Telecom)
Member Services Telecom Commission)
Sanchar Bhavan, Ashok Road)
New Delhi 110 001.)

2) The Chief General Manager)
Mahanagar Telehpone Nigam Limited)
A Company Registered under the)
Companies Act, 1956 and having its)
Mumbai office at Telephone House)
Veer Savarkar Marg, Dadar (W))
Mumbai 400 028.).. RESPONDENTS

Mr.M.K.Nesari for the Petitioner.

None present for the Respondents.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 29TH MARCH 2005

ORAL JUDGMENT :

. This Petition challenges the Award dated 12th June 1996 passed by the Central Government Industrial Tribunal No.1, Mumbai in Reference No.CGIT-1/88 of 1993. The Reference has been rejected by the Tribunal on the ground that Respondent No.2 herein i.e. Mahanagar Telephone Nigam Limited where the members of the

Petitioner Union are employed is not an "industry" and, therefore, not covered by the provisions of the Industrial Disputes Act, 1947. The Industrial Tribunal has placed reliance on the judgment of the Apex Court in the case of *Sub-Divisional Inspector of Post* vs. *Theyyam Joseph*, **(1996) 8 SCC 489**. A later decision of the Apex Court in the case of *Bombay Telephone Canteen Employees' Assn.* vs. *Union of India*, **(1997) 6 SCC 723** also takes the same view.

2. These judgments no longer hold the field. In the case of *General Manager, Telecom* vs. *A.Srinivasa Rao and others*, **(1997) 8 SCC 767**, the Apex Court by placing reliance on the case of Bangalore Water Supply and Sewerage Board vs. A. Rajappa, (1978) 2 SCC 213, has held that the Telecom Department of the Union of India is an "industry". The Apex Court in paragraph 7 has held thus :

> "7. A two-Judge Bench of this Court in Theyyam Joseph case held that the functions of the Postal Department are part of the sovereign functions of the State and it is, therefore, not an "industry" within the definition of Section 2(j) of the Industrial Disputes Act, 1947. Incidentally, this decision was rendered without any reference to the seven-Judge Bench decision in Bangalore Water Supply. In a later two-Judge Bench decision in Bombay Telephone Canteen Employees' Assn. case this decision was followed for taking the view that the Telephone Nigam is not an "industry". Reliance was placed in Theyyam Joseph case for that view. However, in Bombay Telephone

> Canteen Employees' Assn. case (i.e. the latter decision), we find a reference to the Bangalore Water Supply case. After referring to the decision in Bangalore Water Supply it was observed that if the doctrine enunciated in Bangalore Water Supply is strictly applied, the consequence is "catastrophic". With respect, we are unable to subscribe to this view for the obvious reason that it is in direct conflict with the seven-Judge Bench decision in Bangalore Water Supply case by which we are bound. It is needless to add that it is not permissible for us, or for that matter any Bench of lesser strength, to take a view contrary to that in Bangalore Water Supply or to bypass that decision so long as it holds the field. Moreover, that decision was rendered long back - nearly two decades earlier and we find no reason to think otherwise. Judicial discipline requires us to follow the decision in Bangalore Water Supply case. We must, therefore, add that the decisions in Theyyam Joseph and Bombay Telephone Canteen Employees' Assn. cannot be treated as laying down the correct law. This being the only point for decision in this appeal, it must fail."

3. In view of the judgment in *A.Srinivasa Rao* (supra), the Writ Petition is allowed. The impugned Award dated 12th June 1996 passed in Reference No.CGIT-1/88 of 1993 is set aside. Matter remanded to the Central Government Industrial Tribunal No.1, Mumbai for a decision on merits. No order as to costs.